IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4501 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

BANESANG MULJIBHAI

Versus

ANANTRAI PRABHASHANKAR PANCHOLI

Appearance:

MR MEHUL S. SHAH for Petitioners

MR.J.M.PATEL & MR SK BUKHARI for Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/09/97

ORAL JUDGEMENT

The petitioners are challenging by this Special Civil Application the order of the Gujarat Revenue Tribunal, Ahmedabad, dated 16.4.1984 passed in the Revision Application No.TEN.B.A. 1808/1982. Under the said order the Revision Application filed by the respondents No.1 to 4 against the order of the Dy.

Collector dated 10.9.1982 was reversed.

The facts of the case are to be taken briefly for the purpose of appreciating the controversy which has been raised by the parties in this Special Civil Application. The ancestor of the petitioners was the tenant of the land bearing Survey No. 1962 admeasuring 3 Acres and 8 Gunthas located in Dudhrej, sim of Surendranagar and Pancholi Jagganath Jatashanker was the Barkhalidar of the said land at the time when the Saurashtra Barkhali Abolition Act, 1951, came into force. By the said Act the Barkhali tenures came to be abolished, but certain rights were conferred on the Barkhalidars as well as the tenants. The Barkhalidars could have taken the land by applying under the provisions of the said Act for self-cultivation and the tenants had been conferred the right to get occupancy certificates of the lands in their possession. There is no dispute between the parties that the tenants of the land in dispute filed an application to the concerned competent authority on 27.6.1960 and a prayer has been made therein for grant of occupancy certificate. That application came to be allowed by the competent authority under the order dated 20.2.1965. This order of the competent authority was not challenged either by the respondents herein or any other person having any right, title or interest in the land in dispute. After about 17 years of the said order, the respondents No.1 to 4 herein preferred an appeal against the same before the Dy. Collector at Surendranagar and a grievance has been made in that appeal that the order was passed by the competent authority without giving them any notice or opportunity of hearing. Further grievance made by the respondents No.1 to 4 was that though their ancestors were recorded as Barkhalidars on the record, still they have not been impleaded as parties to the proceedings filed by the petitioners. This appeal has been filed by the respondents before the appellate authority on 12.10.1981. The appellate authority under the order dated 10.9.1982 dismissed the appeal of the respondents No.1 to 4 only on the ground of limitation. Being dissatisfied with the order of the appellate authority, the respondents No.1 to 4 herein have preferred a Revision Application before the Gujarat Revenue Tribunal at Ahmedabad and by the impugned order the revision application has been allowed and the matter has been remanded back to the appellate authority for decision of the appeal of the respondents No.1 to 4 on merits. Hence this Special Civil Application before this Court by the petitioners. Reply to this Special Civil Application has been filed by the respondents.

The learned counsel for the petitioners contended that the Revisional Authority has committed a serious error of jurisdiction in reversing the order of the Appellate Authority; that the Appellate Authority has reached the correct conclusion on the basis of the facts which have been brought on record; that the appeal filed by the respondents No.1 to 4 was hopelessly barred by limitation and that the Revisional Authority, while dealing with this question of delay in preferring the appeal, has altogether lost sight of the fact that the petitioners are in possession of the land in dispute continuously. The learned counsel for the petitioners further contended that the application of the petitioners for occupancy certificate has been granted after hearing the Barkhalidars on record and that it is too difficult to believe that for 17 years the respondents No.1 to 4 could not have any notice of the factum of occupying the land by the petitioners and that occupancy certificate has been granted by the competent authority under the provisions of the Saurashtra Barkhali Abolition Act, 1951. It has next been contended by the learned counsel for the petitioners that the power of the appellate authority was very limited and it could have considered the questions as to whether there was any procedural illegality committed by the lower authority and as to whether the finding recorded by the lower authority was perverse or the lower authority has misdirected himself on the question of appreciation of evidence. The appellate authority has recorded a categorical finding that the respondents No.1 to 4 have filed to give any satisfactory explanation for this delay of 17 years in filing the appeal and without giving any good, bad or indifferent reason for disagreement with the findings of the appellate authority the Revisional Authority has reversed the judgment of the appellate authority.

On the other hand, the learned counsel for the respondents submitted that this Court even if on the same set of evidence produced before the authorities below, two views are possible, still, this Court sitting under Article 227 of the Constitution of India,may not interfere with the view taken in favour of the respondents. It has next been contended by the learned counsel for the respondents No.1 to 4 that the respondents No.1 to 4 were not parties to the proceedings which were initiated by the petitioners under the Act of 1951 for grant of occupancy certificate and that any decision given in absence of necessary parties is a decision void ab initio and as such, the question of limitation may not be taken to be so serious as taken by the appellate authority. It has next been contended by

the learned counsel for the respondents that the respondents No.1 to 4, who have right, title or interest in the land in dispute, could not have been divested of the same by the competent authority and they should have been given proper notice and opportunity of hearing in the matter.

I have given thoughtful consideration to the submissions made by the learned counsel for the parties. The Tribunal has proceeded only on the ground that the respondents No.1 to 4 were necessary parties to the proceedings initiated by the petitioners and as such the decision given by the competent authority in favour of the petitioners, in the absence of the respondents, was in violation of the principles of natural justice. It is true that normally in such proceedings under the provisions of the Act of 1951, all the persons concerned with the land in dispute would have been given notice. Still, if this course is not adopted then the larger issue which falls for consideration is whether the order is void ab initio or is voidable. These are the matters of respective claims of the rights of the parties and in such proceedings if one party is not impleaded, it cannot be said that the judgment is without jurisdiction. Such decisions are taken as voidable and the affected parties have to take remedial steps available to them, against the such orders, within reasonable time. The question as to what should be the reasonable time, depends upon the facts of the case. Under the Act of 1951 right to appeal has been conferred and the limitation for the same has also been prescribed. Even after expiry of the period of limitation, there is no bar that the appellate authority cannot entertain the appeal, but the appellant has to make out a case of sufficient reasons which have prevented him from filing the appeal within the period of limitation. In the case in hand the respondents have come out with the explanation on the point of delay of 17 years in filing the appeal, that they were not parties to the proceedings initiated by the petitioners and that they have no knowledge of the order. The respondents No.1 to 4 have stated before the appellate authority that they came to know about the order dated 20.6.1965 only in the year 1981. The appellate authority has not accepted the explanation given by the respondents No.1 to 4 on the point of delay of 17 years in filing the appeal and rejected it on the ground that it is not believable that for 17 years the respondents No.1 to 4 could not have known about the order dated 20.6.1965 passed by the lower authority. It has further been held by the appellate authority that on the basis of the mere statement of the respondents No.1 to 4, it cannot be presumed that the

respondents No.1 to 4 could not have known about the land in question for such a long period of 17 years. The appellate authority has also held that in the application Form No.11, the respondents No.1 to 4 have not been shown as Barkhalidars and that the persons who have been shown as Barkhalidars have been given notice and opportunity of hearing. The reasons given by the appellate authority for not accepting the explanation given by the respondents No.1 to 4 on the point of delay, cannot be said to be arbitrary or perverse or a decision which could not have been taken by a man of ordinary prudence or understanding. The petitioners were in continuous possession of the land and this fact itself is sufficient to draw an inference that the explanation given by the respondents No.1 to 4 are nothing, but only created explanation. The matter would have been different if the petitioners were not in continuous possession of the land even after the Act of 1951 has come into operation. The petitioners are in continuous possession of the land in dispute for all these 17 years and the respondents No.1 to 4 have not taken any step whatsoever for taking this land for their own purposes at the relevant time. The order of the Dy.Collector, therefore, cannot be said to be arbitrary or perverse. If the respondents No.1 to 4 were really having any right, title or interest in the land, then the question as to why they have not taken the appropriate step for allotment of the land to them under the provisions of the Act of 1951, altogether remains unexplained. This conduct on the part of the respondents No.1 to 4 clinches the issue and it appears that after a period of 17 years of passing of the order in favour of the petitioner, for some other extraneous reason, this appeal appears to have been filed by the respondents No.1 to 4. The order impugned in appeal has attained finality long back and above that the petitioners are in continuous possession of the land for a period of more than 17 years from the date of the order. The appellate authorities or the revisional authorities normally should not unsettle such settled and concluded matters unless the parties concerned approached them made out a case of bona fide approach. It is to be noted that the respondents No.1 to 4 have started claiming their right in the land after so many years. If they were alive of their right, title or interest, then normally it is too difficult to accept that they will remain silent for all these years. The Revisional Authority, as stated earlier, has not gone into the substance of the matter and especially the facts that the matter has been concluded and settled because of inaction or omission on the part of the respondents No.1 to 4 and the respondents No.1 to 4 have, at no point of time earlier to filing the

appeal, asserted their right, title or interest in the land. Taking into consideration the totality of the facts of the case, I am fully satisfied that the order passed by the Gujarat Revenue Tribunal is perverse and it cannot be allowed to stand.

It is true that this Court may not be justified in extending its jurisdiction under Article 227 of the Constitution of India in each and every case. Similarly, this Court cannot assume unlimited prerogative to correct all hardships of a wrong decision. It is equally true that this Court would interfere under Article 227 of the Constitution where grave injustice would be done to a party. In a given case where the Tribunal has altogether ignored the fundamental principles of justice, if the order is not interfered with by this Court, certainly it would result in grave injustice to the petitioners. In the case on one hand the petitioners had been granted occupancy certificate in respect of the land in dispute, by the competent authority way back on 20.2.1965 and the said order came to be challenged by the respondents No.1 to 4 after a long period of 17 years.

In result, this Special Civil Application succeeds and the same is allowed. The order passed by the Gujarat Revenue Tribunal, Ahmedabad, in Revision Application No. TEN.B.A. 1808 of 1982 on 16.4.1984 is quashed and set aside. Rule is made absolute with no order as to costs.

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